

### REMARKS

This application has been reviewed in light of the Office Action dated February 12, 2003. Claims 1, 4-7, 10, 13-15, 18, and 30-37 are pending in this application.

Claims 1, 4, 18, and 30 have been amended to define still more clearly what Applicants regard as their invention. Claims 1 and 18 are in independent form. Favorable reconsideration is requested.

The Office Action rejected Claims 1, 5, 6, 10, 15, 18, 31, 32, 34, and 37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,115,358 (Jones); Claims 4 and 30 as being unpatentable over Jones in view of U.S. Patent No. 5,706,428 (Boer et al.); Claims 7 and 33 as being unpatentable over Jones in view of U.S. Patent No. 6,064,678 (Sindhushayana et al.); Claims 13 and 35 as being unpatentable over Jones in view of U.S. Patent No. 5,331,634 (Fischer '634); and Claims 14 and 36 as being unpatentable over Jones in view of U.S. Patent No. 5,077,732 (Fischer '732). Applicants respectfully traverse these rejections.

Applicants submit that amended independent Claims 1 and 18, together with the remaining claims dependent thereon, are patentably distinct from Jones at least for the following reasons.

The aspect of the present invention set forth in Claim 1 is a communication apparatus that includes a communication unit and a control unit. The communication unit has different transfer rates, and is adapted to transmit a predetermined packet to destinations using at least one of the different transfer rates until responses from all of the destinations are received. The control unit is adapted to discriminate a maximum transfer rate between the apparatus and the destinations, based on a response transmitted from each of the destinations.

One notable feature of Claim 1 is that the communication unit has different transfer rates, and is adapted to transmit a predetermined packet to destinations using at least one of the different transfer rates until responses from all of the destinations are received.

Jones, as understood by Applicants, relates to controlling the flow of Asynchronous Transfer Mode (ATM) cells into an ATM network. The Office Action at page 2 states that Jones discloses “a communication unit adapted to transmit a predetermined packet to destinations at a predetermined transfer rate. . .” and refers to column 1, lines 10-42, to support this assertion. Applicants note this section of Jones refers merely to an available bit rate service used in ATM networks intended to make the best use of remaining capacity after higher priority services have been provided for. However, nothing has been found in either this section, or anywhere else in Jones that would teach or suggest a communication unit that has different transfer rates, and which is adapted to transmit a predetermined packet to destinations using at least one of the different transfer rates until responses from all of the destinations are received, as recited in Claim 1. Accordingly, Applicants submit that, at least for this reason, Claim 1 is clearly patentable over Jones.

Independent Claim 18 is a method claim that corresponds to apparatus Claim 1, and is believed to be patentable over Jones for at least the same reason as discussed above in connection with Claim 1.

A review of the other art of record including Boer et al., Sindhushayana et al., Fischer '634, and Fischer '732, has failed to reveal anything that, in Applicants' opinion, would remedy the deficiencies of the art discussed above, as applied against the independent claims herein. Therefore, those claims are respectfully submitted to be patentable over the art of record.

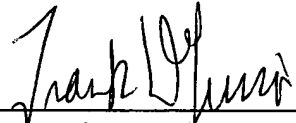
The other rejected claims in this application depend from one or another of the independent claims discussed above, and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

This Amendment After Final Action is believed to place this application in condition for allowance and, therefore, its entry is believed proper under 37 C.F.R. § 1.116. Accordingly, entry of this Amendment After Final Action, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, it is respectfully requested that the Examiner contact Applicants' undersigned attorney in an effort to resolve such issues and advance the case to issue.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,

  
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